

1625.

JUSTICE OF THE PEACE—JURISDICTION—FINAL FOR PROSECUTION
CHARGING VIOLATION OF SECTION 1442, GENERAL CODE.

SYLLABUS:

By the terms of Section 1448, General Code, a justice of the peace has final jurisdiction to hear and determine a prosecution charging a violation of Section 1442, General Code.

COLUMBUS, OHIO, January 26, 1928.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—This will acknowledge your letter dated January 23, 1928, which reads:

“Will you kindly advise me in the matter of Section 1442, General Code, under the game laws of the state, where a person interferes with, threatens, abuses, obstructs, or in any manner attempts to deter a protector * * * from carrying into effect, etc., penalty for which is prescribed under Section 1454, General Code, as to whether or not the justice of the peace has final jurisdiction which precludes the accused of (from) waiving examination and being bound over to the court of common pleas?”

I have advised the justice of the peace that he has final jurisdiction, and that a proceeding in error is the only method by which the matter may be taken to the higher court, yet it is contended otherwise by the accused and his attorney.”

Section 1442, General Code, in so far as pertinent to the question that you present, provides:

“* * * No person shall interfere with, threaten, abuse, assault, obstruct, or in any manner attempt to deter a protector or other police officer from carrying into effect any of the provisions of this act * * *.”

Section 1454, General Code, as amended by the 87th General Assembly, (112 v. 255), provides in part as follows:

“* * * Whoever violates the provisions of Sections 1414-1, 1415 and 1442 of this act shall be fined not less than one hundred dollars nor more than five hundred dollars and costs of prosecution. * * *”

Section 1448, General Code, provides:

“A justice of the peace, mayor or police judge shall have final jurisdiction within his county in a prosecution for violation of any provision of the laws relating to the protection, preservation or propagation of birds, fish, game and fur-bearing animals and shall have like jurisdiction in a proceeding for the condemnation and forfeiture of property used in the violation of any such law.”

You will note that Section 1448, *supra*, specifically states that “a justice of the peace * * * shall have final jurisdiction within his county in a prosecution for violation of any provision of the laws relating to the protection, preservation or

propagation of birds, fish, game and fur-bearing animals." The offense of which you inquire is included within that class of offenses, wherein, as provided by Section 1448, supra, a justice of the peace has final jurisdiction.

In this connection your attention is directed to Opinion No. 204, dated March 18, 1927, addressed to the Department of Agriculture, Division of Fish and Game, the syllabus of which reads:

"The decision of the Supreme Court of the United States in the case of *Tumey vs. State of Ohio*, decided March 7, 1927, does not affect the jurisdiction of a justice of the peace in prosecutions for violations of any provision of the laws relating to the protection, preservation or propagation of birds, fish, game and fur-bearing animals, so far as pecuniary interest is concerned. However, it must be borne in mind at all times that the defendant is entitled to a fair and impartial trial and pecuniary interest is not the only interest which will disqualify a magistrate."

I agree with the conclusion reached by you in this regard and it is my opinion that, by the terms of Section 1448, General Code, a justice of the peace has final jurisdiction to hear and determine a prosecution charging a violation of Section 1442, General Code.

I am enclosing herewith a copy of Opinion No. 204 referred to.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1626.

TOWNSHIP TRUSTEES—EMPLOYMENT OF LEGAL COUNSEL OTHER THAN PROSECUTING ATTORNEY—MAY DO SO BY RESOLUTION—EMPLOYMENT FOR PARTICULAR CASE—COMPENSATION FIXED.

SYLLABUS:

1. *Under the provisions of Section 2917, General Code, the township trustees of a township may, by resolution duly adopted and entered on their minutes, employ an attorney other than the prosecuting attorney of the county to represent them in a particular case in which they are parties in their official capacity. In such case the resolution providing for the employment of such attorney should fix the compensation to be paid to him for his services in the case.*

2. *The township trustees of a township are not authorized to employ an attorney permanently on an annual or monthly salary to act as the legal adviser of such trustees and other township officers and to represent such trustees and other township officers in all cases in which such officers may become parties in their official capacity.*

COLUMBUS, OHIO, January 26, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your recent communication, in which you ask my opinion on certain questions therein stated. Your communication is as follows:

"Section 2917, G. C., provides that the prosecuting attorney shall be the legal adviser for all township officers, and no such officer may employ other counsel or attorney except on the order of the township trustees duly en-